IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 2446 OF 2006
WITH
CHAMBER SUMMONS NO. 320 OF 2006

Mahesh Travels and Tours & Ors. ... Petitioners

Versus

The State of Mah. and Ors. ... Respondents

Mr. N.V. Walavalkar, Sr. Counsel with Mr. Sanjiv Savant for Petitioner.

Mr. K.R. Belosey, Government Pleader for R. No. 1.

Mr. R.A. Shaikh for Applicant.

CORAM: F.I. REBELLO &
ANOOP V. MOHTA,JJ.
DATED: NOVEMBER 29, 2006

P.C.:

. Rule. By consent heard forthwith.

. Considering the order to be passed, the bare facts required for considering the reliefs are being set out. The Petitioner No. 1 runs launch services from Mumbai to Elephanta island. The other launch owners who are also plying launches between Mumbai and Elephanta island have an Association. The Petitioners herein had earlier challenged the roster system introduced. The Supreme Court in Mahesh Travels and tours and others Versus The Commissioner of Police and Others, 1989 Sup (2) Supreme Court Cases 303 upheld the powers of the Port Trust to prepare and enforce the roster system as being a

measure to maintain order in the public place. That judgment was pronounced on 1st May, 1989. The roster system as then introduced continued to be in operation till the respondent discontinued this temporary arrangement as continued by letter of 12.9.2004.

. The intervenor association it appears had some grievances against the Petitioner pursuant to which they raised their grievance before the State Minister of the Government of Maharashtra. A meeting was convened and held on 1.2.2005. The Petitioners herein were not invited to the said meeting. The Minutes of the meeting, an English translation of which has been submitted to us, reads as under :

> "Hon’ble Minister gave orders to Mumbai Port Trust Fund and Maharashtra Maritime Board to prepare roster for launch and also implementing said roster from 10.2.2005 and to implement all of this, also instructed to take separate meeting regarding other problems and ended the meeting by; thanking all present people."

. Subsequent to that, a new roster has been

introduced with effect from 20.5.2006.

. The Petitioners herein had challenged the new roster on two counts. It is firstly contended that Mumbai Port Trust is a Major Port and therefore, the activities are within the jurisdiction of Respondent Nos. 3 and 4. It is therefore, submitted that the Minister of State for Ports, State of Maharashtra could not have directed Respondent No. 3 and 4 to frame a new roster.

. It is next submitted that at any rate, the Petitioners under the old roster had certain rights. Consequent to the new roster being implemented, their rights have been affected. No opportunity was given to them to put their point of view before the decision was taken at the instance of the Minister of State for Ports, State of Maharahtra and as such the decision is arbitrary being violative of the principles of natural justice and fair play and consequently liable to be set aside.

. On behalf of the Port Trust Capt. Vinod Malhotra has filed affidavit. According to the said affiant, the roster was framed in the year 1993 after the Supreme Court’s order and it worked smoothly for a long time. The other averments are that the modified roster on 27.9.2004 was a temporary

arrangement and corrigendum has been issued but the Petitioner has not produced the same on record. It is further set out that the sample roster was submitted by the Respondent No. 3 and forwarded to Respondent No. 2 for guidance. The Respondent No. 2 was a regulating authority as per the Government of India's order dated 4th May, 1994. It is then set out that the 3rd Respondent at the request of the 2nd respondent framed the roster on 16.5.2006.

. Captain J.B. Rohilla on behalf of Respondent No. 2 has filed an affidavit. The said affiant has set out that whatever grievance the Petitioner may have against the concerned roster system for the launches operating at the Port of Mumbai including the launches operating from Gateway of India to Elephanta have to be looked into only by the Respondent Nos. 3 and 4 and the Respondent No. 2 has no power or authority to alter the same.

. From the above, what emerges is that the stand of the Respondent No. 2 is that the roster has to be prepared by Respondent Nos. 3 and 4 and once that is prepared, they would implement the same. The stand of Respondent Nos. 3 and 4 in their affidavit is that what they have prepared was only a draft roster and at the request of the Respondent No. 2. It would therefore, be clear that the Respondent

Nos. 3 and 4 had not finalized any roster. What was submitted was only a draft roster. It is however, the draft roster which is now being implemented, which according to Petitioners has adversely affected their business and that too without giving them opportunity.

. Considering the stand of Respondent Nos. 2, 3 and 4, it will be clear that the roster as now being implemented is without authority of law and consequently is liable tobe set aside. In the circumstances, we make rule absolute in terms of Prayer Clause (a)(i). We further direct Respondent Nos. 3 and 4, before preparing a new roster if advised apart from hearing the Intervenor Association, also to hear Petitioners and thereafter only notify a new roster. Untill a roster is prepared and implemented, the roster which was in force from 1993 and as amended on 27.9.2004 if the said amendment still continue, to be implemented. Rule made absolute accordingly. No order as to costs.

. As we have heard the applicants in Chamber Summons and as the Petition is disposed of Chamber Summons also stands disposed of.

(ANOOP V. MOHTA,J.) **(F.I.REBELLO, J.)**